

7 CFR 225, Subpart C – Sponsor and Site Provisions

§225.14 Summer Food Service Program Requirements for sponsor participation

- (a) Applications.** Sponsors shall make written application to the State agency to participate in the Program. Such application shall be made on a timely basis in accordance with the requirements of §225.6(b)(1). Sponsors proposing to operate a site during an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be exempt, at the discretion of the State agency, from submitting a new application if they have participated in the program at any time during the current year or in either of the prior two calendar years.
- (b) Sponsor eligibility.** Applicants eligible to sponsor the Program include:
- (1) Public or nonprofit private school food authorities;
 - (2) Public or nonprofit private residential summer camps;
 - (3) Units of local, municipal, county, or State governments;
 - (4) Public or private nonprofit colleges or universities which are currently participating in the National Youth Sports Program; and
 - (5) Private nonprofit organizations as defined in §225.2.
- (c) General requirements.** No applicant sponsor shall be eligible to participate in the Program unless it:
- (1) Demonstrates financial and administrative capability for Program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposes to conduct a food service;
 - (2) Has not been seriously deficient in operating the Program;
 - (3) Will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist, or qualifies as a camp;
 - (4) Has adequate supervisory and operational personnel for overall monitoring and management of each site, including adequate personnel to conduct the visits and reviews required in §225.15(d) (2) and (3);
 - (5) Provides an ongoing year-round service to the community which it proposes to serve under the Program, except as provided for in §225.6(b)(4);
 - (6) Certifies that all sites have been visited and have the capability and the facilities to provide the meal service planned for the number of children anticipated to be served; and
 - (7) Enters into a written agreement with the State agency upon approval of its application, as required in §225.6(e).
- (d) Requirements specific to sponsor types**
- (1) If the sponsor is a camp, it must certify that it will collect information on participants' eligibility to support its claim for reimbursement.
 - (2) If the sponsor administers the Program at sites that provide summer school sessions, it must ensure that these sites are open to children enrolled in summer school and to all children residing in the area served by the site.
 - (3) Sponsors which are units of local, municipal, county or State government, and sponsors which are private nonprofit organizations, will only be approved to administer the Program at sites where they have direct operational control. Operational control means that the sponsor shall be responsible for:
 - (i) Managing site staff, including the hiring, terminating, and determining conditions of employment for site staff; and
 - (ii) Exercising management control over Program operations at sites throughout the period of Program participation by performing the functions specified in §225.15.
 - (4) If the sponsor administers homeless feeding sites, it must:
 - (i) Document that the site is not a residential child-care institution as defined in paragraph (c) of the definition of 'School' contained in §210.2 of this chapter;
 - (ii) Document that the primary purpose of the homeless feeding site is to provide shelter and meals to homeless families; and
 - (iii) Certify that these sites employ meal counting methods to ensure that reimbursement is claimed only for meals served to homeless and non-homeless children.
 - (5) If the sponsor administers NYSP sites, it must ensure that all children at these sites are enrolled participants in the NYSP.
 - (6) If the sponsor is a private nonprofit organization, it must certify that it:
 - (i) Exercises full control and authority over the operation of the Program at all sites under the sponsorship of the organization;
 - (ii) Provides ongoing year-round activities for children or families;
 - (iii) Demonstrates that the organization has adequate management and the fiscal capacity to operate the Program;
 - (iv) Is an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code; and

- (v) Meets applicable State and local health, safety, and sanitation standards.

§225.15 Summer Food Service Program Management responsibilities of sponsors

(a) General

- (1) Sponsors shall operate the food service in accordance with: the provisions of this part; any instructions and handbooks issued by FNS under this part; and any instructions and handbooks issued by the State agency which are not inconsistent with the provisions of this part.
- (2) Sponsors shall not claim reimbursement under parts 210, 215, 220, or 226 of this chapter. In addition, the sponsor must ensure that records of any site serving homeless children accurately reflect commodity allotments received as a "charitable institution", as defined in §§250.3 and 250.41 of this chapter. Commodities received for Program meals must be based only on the number of eligible children's meals served. Sponsors may use funds from other Federally-funded programs to supplement their meal service but must, in calculating their claim for reimbursement, deduct such funds from total operating and administrative costs in accordance with the definition of "income accruing to the Program" at §225.2 and with the regulations at §225.9(d). Sponsors which are school food authorities may use facilities, equipment and personnel supported by funds provided under this part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).
- (3) No sponsor may contract out for the management responsibilities of the Program described in this section.

(b) Meal Ordering

- (1) Each sponsor shall, to the maximum extent feasible, utilize either its own food service facilities or obtain meals from a school food service facility. If the sponsor obtains meals from a school food service facility, the applicable requirements of this part shall be embodied in a written agreement between the sponsor and the school.
- (2) Upon approval of its application or any adjustment in the approved levels of meal service for its sites established under §225.6(d)(2), vended sponsors shall inform their food service management company of the approved level at each site for which the food service management company will provide meals.
- (3) Sponsors shall plan for and prepare or order meals on the basis of participation trends with the objective of providing only one meal per child at each meal service. The sponsor shall make the adjustments necessary to achieve this objective using the results from its monitoring of sites. For sites for which approved levels of meal service have been established in accordance with §225.6(d)(2), the sponsor shall adjust the number of meals ordered or prepared with the objective of providing only one meal per child whenever the number of children attending the site is below the approved level. The sponsor shall not order or prepare meals for children at any site in excess of the site's approved level, but may order or prepare meals above the approved level if the meals are to be served to adults performing necessary food service labor in accordance with §225.9(d)(4). Records of participation and of preparation or ordering of meals shall be maintained to demonstrate positive action toward meeting this objective.
- (4) In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, sponsors may claim reimbursement for a number of second meals which does not exceed two percent of the number of first meals served to children for each meal type (i.e., breakfasts, lunches, supplements, or suppers) during the claiming period. The State agency shall disallow all claims for second meals if it determines that the sponsor failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. Second meals shall be served only after all participating children at the site's meal service have been served a meal.

(c) Records and claims

- (1) Sponsors shall maintain accurate records which justify all costs and meals claimed. Failure to maintain such records may be grounds for denial of reimbursement for meals served and/or administrative costs claimed during the period covered by the records in question. The sponsor's records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and the State agency for a period of three years following the date of submission of the final claim for reimbursement for the fiscal year.
- (2) Sponsors shall submit claims for reimbursement in accordance with this part. All final claims must be submitted to the State agency within 60 days following the last day of the month covered by the claim.

(d) Training and monitoring

- (1) Each sponsor shall hold Program training sessions for its administrative and site personnel and shall allow no site to operate until personnel have attended at least one of these training sessions. The State agency may waive these training requirements for operation of the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar). Training of site personnel shall, at a minimum, include: the purpose of the Program; site eligibility; recordkeeping; site operations; meal pattern requirements; and the duties of a monitor. Each sponsor shall ensure that its administrative personnel

attend State agency training provided to sponsors, and sponsors shall provide training throughout the summer to ensure that administrative personnel are thoroughly knowledgeable in all required areas of Program administration and operation and are provided with sufficient information to enable them to carry out their Program responsibilities. Each site shall have present at each meal service at least one person who has received this training.

- (2) Sponsors shall visit each of their sites at least once during the first week of operation under the Program and shall promptly take such actions as are necessary to correct any deficiencies.
- (3) Sponsors shall review food service operations at each site at least once during the first four weeks of Program operations, and thereafter shall maintain a reasonable level of site monitoring. Sponsors shall complete a monitoring form developed by the State agency during the conduct of these reviews.

(e) Media Release. Each sponsor shall annually announce in the media serving the area from which it draws its attendance the availability of free meals. Camps and other programs not eligible under §225.2 (paragraph (a) of “areas in which poor economic conditions exist”) shall annually announce to all participants the availability of free meals for eligible children. All media releases issued by camps and other programs not eligible under §225.2 (paragraph (a) of “areas in which poor economic conditions exist”) shall include: the Secretary's family-size and income standards for reduced price school meals labeled “SFSP Income Eligibility Standards”; a statement that a foster child and children who are members of households receiving SNAP, FDPIR, or TANF benefits are automatically eligible to receive free meal benefits at eligible program sites; and a statement that meals are available without regard to race, color, national origin, sex, age, or disability.

(f) Application for free Program meals

- (1) *Purpose of application form.* The application is used to determine the eligibility of children attending camps and the eligibility of sites that are not open sites as defined in paragraph (a) of the definition of “areas in which poor economic conditions exist”, in §225.2. In these situations, parents or guardians of children enrolled in camps or these other sites must be given application forms to provide information described in paragraph (f)(2) or (f)(3) of this section, as applicable. Applications are not necessary if other information sources are available and can be used to determine eligibility of individual children in camps or sites.
- (2) *Application procedures based on household income.* The household member completing the application on behalf of the child enrolled in the Program must provide the following information:
 - (i) The names of all children for whom application is made;
 - (ii) The names of all other household members;
 - (iii) The last four digits of the social security number of the adult household member who signs the application or an indication that the household member does not have a social security number;
 - (iv) The income received by each household member identified by source of income;
 - (v) The signature of an adult household member;
 - (vi) The date the application is completed and signed.
- (3) *Application based on the household's receipt of SNAP, FDPIR, or TANF benefits.* Households may apply on the basis of receipt of food stamp, FDPIR, or TANF benefits by providing the following information:
 - (i) The name(s) and SNAP, FDPIR, or TANF case number(s) of the child(ren) who are enrolled in the Program; and
 - (ii) The signature of an adult household member.
- (4) *Information or notices required on application forms.* Application forms or descriptive materials given to households about applying for free meals must contain the following information:
 - (i) The family-size and income levels for reduced price school meal eligibility with an explanation that households with incomes less than or equal to these values are eligible for free Program meals (NOTE: The income levels for free school meal eligibility must not be included on the application or in other materials given to the household).
 - (ii) A statement that a foster child who is a member of a household that receives SNAP, FDPIR, or TANF benefits is automatically eligible to receive free meals in the Program;
 - (iii) A statement informing households of how information provided on the application will be used. Each application for free meals must include substantially the following statement:

(A) “The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced-price meals. You must include the last four digits of the social security number of the adult household member who signs the application. The last four digits of the social security number are not required when you apply on behalf of a foster child or you list a Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number or other FDPIR identifier for your child or when you indicate that the adult household member signing the application does not have a social security number. We MAY share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs, and with auditors for program reviews and law enforcement officials to help them look into violations of program rules.”

(B) When the State agency or sponsor, as appropriate, plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (i) of this section, must be added to the statement. State agencies and sponsors are responsible for drafting the appropriate notice.

- (iv) The statement used to inform the household about the use of social security numbers must comply with the Privacy Act of 1974 (Pub. L. 93-579). If a State or local agency plans to use the social security numbers for uses not described in paragraph (f)(4)(iv) of this section, the notice must be revised to explain those uses.
 - (v) Examples of income that should be provided on the application, including: Earnings, wages, welfare benefits, pensions, support payments, unemployment compensation, social security, and other cash income;
 - (vi) A notice placed immediately above the signature block stating that the person signing the application certifies that all information provided is correct, that the household is applying for Federal benefits in the form of free Program meals, that Program officials may verify the information on the application, and that purposely providing untrue or misleading statements may result in prosecution under State or Federal criminal laws; and
 - (vii) A statement that if SNAP, FDPIR, or TANF case numbers are provided, they may be used to verify the current SNAP, FDPIR, or TANF certification for the children for whom free meals benefits are claimed.
- (5) *Verifying information on Program applications.* Households selected to verify information on their Program applications must be notified in writing that:
- (i) They will lose Program benefits or be terminated from participation if they do not cooperate with the verification process;
 - (ii) They will be given the name and phone number of an official who can assist in the verification process;
 - (iii) Verification may occur during program reviews, audits, and investigations;
 - (iv) Verification may include contacting employers, SNAP or welfare offices, or State employment offices to determine the accuracy of statements on the application about income, receipt of SNAP, FDPIR, TANF, or unemployment benefits; and
 - (v) They may lose benefits or face claims or legal action if incorrect information is reported on the application.

(g) *Disclosure of children's free and reduced price meal eligibility information to certain programs and individuals without parental consent.* The State agency or sponsor, as appropriate, may disclose aggregate information about children eligible for free and reduced price meals to any party without parental notification and consent when children cannot be identified through release of the aggregate data or by means of deduction. Additionally, the State agency or sponsor may disclose information that identifies children eligible for free and reduced price meals to the programs and the individuals specified in this paragraph (g) without parent/guardian consent. The State agency or sponsor that makes the free and reduced price meal eligibility determination is responsible for deciding whether to disclose program eligibility information.

- (1) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in paragraphs (g)(2) or (g)(3) of this section may have access to children's free and reduced price meal eligibility information, without parental consent. Persons considered directly connected with administration or enforcement of a program or activity listed in paragraphs (g)(2) or (g)(3) of this section are Federal, State, or local program operators responsible for the ongoing operation of the program or activity or persons responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies and program operators contract with to assist in the administration or enforcement of their program in their behalf.
- (2) *Disclosure of children's names and free or reduced price meal eligibility status.* The State agency or sponsor, as appropriate, may disclose, without parental consent, only children's names and eligibility status (whether they are eligible for free meals or reduced price meals) to persons directly connected with the administration or enforcement of:
 - (i) A Federal education program;
 - (ii) A State health program or State education program administered by the State or local education agency;
 - (iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (i.e., food assistance programs for households with incomes at or below 185 percent of the Federal poverty level); or
- (3) *Disclosure of all eligibility information.* In addition to children's names and eligibility status, the State agency or sponsor, as appropriate, may disclose, without parental consent, all eligibility information obtained through the free and reduced price meal eligibility process (including all information on the application or obtained through direct certification) to:
 - (i) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility

information obtained for the Summer Food Service Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch Program, Special Milk Program, School Breakfast Program, Child and Adult Care Food Program, and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (parts 210, 215, 220, 226 and 246, respectively, of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (g)(2) and (g)(3) of this section.

(4) *Use of free and reduced price meals eligibility information by programs other than Medicaid or the State Children's Health Insurance Program (SCHIP).* State agencies and sponsors may use children's free and reduced price meal eligibility information for administering or enforcing the Summer Food Service Program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the Summer Food Service Program may use the information for that purpose. Individuals and programs to which children's free or reduced price meal eligibility information has been disclosed under this section may use the information only in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(h) Disclosure of children's free or reduced price meal eligibility information to Medicaid and/or SCHIP, unless parents decline. Children's free or reduced price meal eligibility information only may be disclosed to Medicaid or SCHIP when both the State agency and the sponsor so elect, the parental/guardian does not decline to have their eligibility information disclosed and the other provisions described in paragraph (h)(1) of this section are met. The State agency or sponsor, as appropriate, may disclose children's names, eligibility status (whether they are eligible for free or reduced price meals), and any other eligibility information obtained through the free and reduced price meal applications or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP. Persons directly connected to the administration of Medicaid and SCHIP are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations for Medicaid or SCHIP.

(1) The State agency must ensure that:

(i) The sponsors and health insurance program officials have a written agreement that requires the health insurance program agency to use the eligibility information to seek to enroll children in Medicaid and SCHIP; and

(ii) Parents/guardians are notified that their eligibility information may be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed, prior to any disclosure.

(2) *Use of children's free and reduced price meal eligibility information by Medicaid/SCHIP.* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal eligibility information must use the information to seek to enroll children in Medicaid or SCHIP. The Medicaid and SCHIP enrollment process may include targeting and identifying children from low-income households who are potentially eligible for Medicaid or SCHIP for the purpose of seeking to enroll them in Medicaid or SCHIP. No further disclosure of the information may be made. Medicaid and SCHIP agencies and health insurance program operators also may verify children's eligibility in a program under the Child Nutrition Act of 1966 or the Richard B. Russell National School Lunch Act.

(i) Notifying households of potential uses and disclosures of children's free and reduced price meal eligibility information. Households must be informed that the information they provide on the free and reduced price meal application will be used to determine eligibility for free or reduced price meals and that their eligibility information may be disclosed to other programs.

(1) For disclosures to programs, other than Medicaid or the State Children's Health Insurance Program (SCHIP), that are permitted access to children's eligibility information, without parental/guardian consent, the State agency or sponsor, as appropriate, must notify parents/guardians at the time of application that their children's free or reduced price meal eligibility information may be disclosed. The State agency or sponsor, as appropriate, must add substantially the following statement to the statement required under paragraph (f)(4)(iv) of this section, "We may share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs; auditors for program reviews; and law enforcement officials to help them look into violations of program rules." For children determined eligible for free meals through the direct certification, the notice of potential disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals through direct certification.

(2) For disclosure to Medicaid or SCHIP, the State agency or sponsor, as appropriate, must notify parents/guardians that their children's free or reduced price meal eligibility information will be disclosed to Medicaid and/or SCHIP unless the parent/guardian elects not to have their information disclosed and notifies the State agency or sponsor, as appropriate, by a date specified by the State agency or sponsor, as appropriate. Only the parent or guardian who is a member of the household or family for purposes of the free and reduced price meal application

may decline the disclosure of eligibility information to Medicaid or SCHIP. The notification must inform parents/guardians that they are not required to consent to the disclosure, that the information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP, and that their decision will not affect their children's eligibility for free or reduced price meals. The notification may be included in the letter/notice to parents/guardians that accompanies the free and reduced price meal application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond if they do not want their information disclosed. The State agency or sponsor, as appropriate, must add substantially the following statement to the statement required under paragraph (f) of this section, "We may share your information with Medicaid or the State Children's Health Insurance Program, unless you tell us not to. The information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP." For children determined eligible for free meals through direct certification, the notice of potential disclosure and opportunity to decline the disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals through direct certification process.

(j) Other disclosures. State agencies and sponsors that plan to use or disclose information about children eligible for free and reduced price meals in ways not specified in this section must obtain written consent from children's parents or guardians prior to the use or disclosure.

- (1) The consent must identify the information that will be shared and how the information will be used.
- (2) There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free meals and that the individuals or programs receiving the information will not share the information with any other entity or program.
- (3) Parents/guardians must be permitted to limit the consent only to those programs with which they wish to share information.
- (4) The consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal application.

(k) Agreements with programs/individuals receiving children's free or reduced price meal eligibility information.

Agreements or Memoranda of Understanding (MOU) are recommended or required as follows:

- (1) The State agency or sponsor, as appropriate, should have a written agreement or MOU with programs or individuals receiving eligibility information, prior to disclosing children's free and reduced price meal eligibility information. The agreement or MOU should include information similar to that required for disclosures to Medicaid and SCHIP specified in paragraph (k)(2) of this section.
- (2) For disclosures to Medicaid or SCHIP, the State agency or sponsor, as appropriate, must have a written agreement with the State or local agency or agencies administering Medicaid or SCHIP prior to disclosing children's free or reduced price meal eligibility information to those agencies. At a minimum, the agreement must:
 - (i) Identify the health insurance program or health agency receiving children's eligibility information;
 - (ii) Describe the information that will be disclosed;
 - (iii) Require that the Medicaid or SCHIP agency use the information obtained and specify that the information must be used to seek to enroll children in Medicaid or SCHIP;
 - (iv) Require that the Medicaid or SCHIP agency describe how they will use the information obtained;
 - (v) Describe how the information will be protected from unauthorized uses and disclosures;
 - (vi) Describe the penalties for unauthorized disclosure; and
 - (vii) Be signed by both the Medicaid or SCHIP program or agency and the State agency or sponsor, as appropriate.

(l) Penalties for unauthorized disclosure or misuse of children's free and reduced price meal eligibility information.

In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

(m) Food service management companies

- (1) Failure by a sponsor to comply with the provisions of this section shall be sufficient grounds for the State agency to terminate that sponsor's participation in accordance with §225.18.
- (2) Any sponsor may contract with a food service management company to manage the sponsor's food service operations and/or for the preparation of unitized meals with or without milk or juice. Exceptions to the unitizing requirement may only be made in accordance with the provisions set forth at §225.6(h)(3).
- (3) Any vended sponsor shall be responsible for ensuring that its food service operation is in conformity with its agreement with the State agency and with all the applicable provisions of this part.
- (4) In addition to any applicable State or local laws governing bid procedures, and with the exceptions identified in this paragraph, each sponsor which contracts with a food service management company shall comply with the

competitive bid procedures described in this paragraph. Sponsors which are schools or school food authorities and which have an exclusive contract with a food service management company for year-round service, and sponsors whose total contracts with food service management companies will not exceed \$10,000, shall not be required to comply with these procedures. These exceptions do not relieve the sponsor of the responsibility to ensure that competitive procurement procedures are followed in contracting with any food service management company. Each sponsor whose proposed contract is subject to the specific bid procedures set forth in this paragraph shall ensure, at a minimum, that:

- (i) All proposed contracts are publicly announced at least once, not less than 14 calendar days prior to the opening of bids, and the announcement includes the time and place of the bid opening;
- (ii) The bids are publicly opened;
- (iii) The State agency is notified, at least 14 calendar days prior to the opening of the bids, of the time and place

of the bid opening;

- (iv) The invitation to bid does not specify a minimum price;
 - (v) The invitation to bid contains a cycle menu approved by the State agency upon which the bid is based;
 - (vi) The invitation to bid contains food specifications and meal quality standards approved by the State agency upon which the bid is based;
 - (vii) The invitation to bid does not specify special meal requirements to meet ethnic or religious needs unless such special requirements are necessary to meet the needs of the children to be served;
 - (viii) Neither the invitation to bid nor the contract provides for loans or any other monetary benefit or term or condition to be made to sponsors by food service management companies;
 - (ix) Nonfood items are excluded from the invitation to bid, except where such items are essential to the conduct of the food service;
 - (x) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, are submitted to the State agency prior to the beginning of Program operations;
 - (xi) Copies of all bids received are submitted to the State agency, along with the sponsor's reason for choosing the successful bidder; and
 - (xii) All bids in an amount which exceeds the lowest bid and all bids totaling \$100,000 or more are submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.
- (5) Each food service management company which submits a bid over \$100,000 shall obtain a bid bond in an amount not less than five (5) percent nor more than ten (10) percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid.
 - (6) Each food service management company which enters into a food service contract for over \$100,000 with a sponsor shall obtain a performance bond in an amount not less than ten (10) percent nor more than twenty-five (25) percent of the value of the contract, as determined by the State agency, of the value of the contract for which the bid is made. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds \$100,000. Sponsors shall require the food service management company to furnish a copy of the performance bond within ten days of the awarding of the contract.
 - (7) Food service management companies shall obtain bid bonds and performance bonds only from surety companies listed in the current Department of the Treasury Circular 570. No sponsor or State agency shall allow food service management companies to post any "alternative" forms of bid or performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts.

(n) Other responsibilities. Sponsors shall comply with all of the meal service requirements set forth in §225.16.

§225.16 Summer Food Service Program Meal service requirements.

(a) Sanitation. Sponsors shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Sponsors shall ensure that adequate facilities are available to store food or hold meals. Within two weeks of receiving notification of their approval, but in any case prior to commencement of Program operation, sponsors shall submit to the State agency a copy of their letter advising the appropriate health department of their intention to provide a food service during a specific period at specific sites.

(b) Meal services. The meals which may be served under the Program are breakfast, lunch, supper, and supplements, referred to from this point as "snacks". No sponsor may be approved to provide more than two snacks per day. A sponsor may only be reimbursed for meals served in accordance with this section.

- (1) *Camps.* Sponsors of camps shall only be reimbursed for meals served in camps to children from families which meet the eligibility standards for this Program. The sponsor shall maintain a copy of the documentation

establishing the eligibility of each child receiving meals under the Program. Meal service at camps shall be subject to the following provisions:

- (i) Each day a camp may serve up to three meals or two meals and one snack;
 - (ii) Residential camps are not subject to the time restrictions for meal service set forth at paragraphs (c) (1) and (2) of this section; and
 - (iii) A camp shall be approved to serve these meals only if it has the administrative capability to do so; if the service period of the different meals does not coincide or overlap; and, where applicable, if it has adequate food preparation and holding facilities.
- (2) *NYSP Sites.* Sponsors of NYSP sites shall only be reimbursed for meals served to enrolled NYSP participants at these sites.
- (3) *Restrictions on the number and type of meals served.* Food service sites other than camps and sites that primarily serve migrant children may serve either:
- (i) One meal each day, a breakfast, a lunch, or snack; or
 - (ii) Two meals each day, if one is a lunch and the other is a breakfast or a snack.
- (4) *Sites which serve children of migrant families.* Food service sites that primarily serve children from migrant families may be approved to serve each day up to three meals or two meals and one snack. These sites shall serve children in areas where poor economic conditions exist as defined in §225.2. A sponsor which operates in accordance with this part shall receive reimbursement for all meals served to children at these sites. A site which primarily serves children from migrant families shall only be approved to serve more than one meal each day if it has the administrative capability to do so; if the service period of the different meals does not coincide or overlap; and, where applicable, if it has adequate food preparation and holding facilities.

(c) Time restrictions for meal service.

- (1) Three hours must elapse between the beginning of one meal service, including snacks, and the beginning of another, except that 4 hours must elapse between the service of a lunch and supper when no snack is served between lunch and supper. The service of supper shall begin no later than 7 p.m., unless the State agency has granted a waiver of this requirement due to extenuating circumstances. These waivers shall be granted only when the State agency and the sponsor ensure that special arrangements shall be made to monitor these sites. In no case may the service of supper extend beyond 8 p.m. The time restrictions in this paragraph shall not apply to residential camps.
- (2) The duration of the meal service shall be limited to two hours for lunch or supper and one hour for all other meals.
- (3) Meals served outside of the period of approved meal service shall not be eligible for Program payments.
- (4) Any permanent or planned changes in meal service periods must be approved by the State agency.
- (5) Meals which are not prepared at the food service site shall be delivered no earlier than one hour prior to the beginning of the meal service (unless the site has adequate facilities for holding hot or cold meals within the temperatures required by State or local health regulations) and no later than the beginning of the meal service.
- (6) The sponsor shall claim for reimbursement only the type(s) of meals for which it is approved under its agreement with the State agency.

(d) Meal patterns. The meal requirements for the Program are designed to provide nutritious and well-balanced meals to each child. Sponsors shall ensure that meals served meet all of the requirements. Except as otherwise provided in this section, the following tables present the minimum requirements for meals served to children in the Program. Children age 12 and up may be served larger portions based on the greater food needs of older boys and girls.

- (1) *Breakfast.* The minimum amount of food components to be served for breakfast will be met;
- (2) *Lunch or supper.* The minimum amounts of food components to be served as lunch or supper will be met;
- (3) *Snacks.* The minimum amounts of food components to be served as snacks will be met; should be served as a beverage or on cereal, or used in part for each purpose.

(e) Meat or meat alternate. Meat or meat alternates served under the Program are subject to the following requirements and recommendations.

- (1) The required quantity of meat or meat alternate shall be the quantity of the edible portion as served. These foods must be served in a main dish, or in a main dish and one other menu item.
- (2) Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but they may not be used to meet both component requirements in a meal.
- (3) Enriched macaroni with fortified protein may be used to meet part but not all of the meat/meat alternate requirement. The Department will provide guidance to State agencies on the part of the meat/meat alternate requirement which these foods may be used to meet. If enriched macaroni with fortified protein is served as a meat alternate it shall not be counted toward the bread requirement.
- (4) If the sponsor believes that the recommended portion size of any meat or meat alternate is too large to be appealing to children, the sponsor may reduce the portion size of that meat or meat alternate and supplement it with another meat or meat alternate to meet the full requirement.

- (5) Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall not be used as meat alternates due to their low protein content. Nut and seed meals or flours shall not be used as a meat alternate except as defined in this section under paragraph (e)(3) and in this part under Appendix A: Alternate Foods for Meals. As noted in paragraph (d)(2) of this section, nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirement for lunch or supper. Therefore, nuts or seeds must be combined with another meat/meat alternate to fulfill the requirement. For the supplemental food pattern, nuts or seeds may be used to fulfill all of the meat/meat alternate requirement.

(f) Exceptions to and variations from the meal pattern—(1) Meals provided by school food authorities—

- (i) *Meal pattern substitution.* School food authorities that are Program sponsors and that participate in the National School Lunch or School Breakfast Program during any time of the year may substitute the meal pattern requirements of the regulations governing those programs (Parts 210 and 220 of this chapter, respectively) for the meal pattern requirements in this section.
 - (ii) *Offer versus serve.* School food authorities that are Program sponsors may permit a child to refuse one or more items that the child does not intend to eat. The school food authority must apply this “offer versus serve” option under the rules followed for the National School Lunch Program, as described in part 210 of this chapter. The reimbursements to school food authorities for Program meals served under the “offer versus serve” must not be reduced because children choose not to take all components of the meals that are offered.
- (2) *Children under 6.* The State agency may authorize the sponsor to serve food in smaller quantities than are indicated in paragraph (d) of this section to children under six years of age if the sponsor has the capability to ensure that variations in portion size are in accordance with the age levels of the children served. Sponsors wishing to serve children under one year of age shall first receive approval to do so from the State agency. In both cases, the sponsor shall follow the age-appropriate meal pattern requirements contained in the Child and Adult Care Food Program regulations (7 CFR part 226).
- (3) *Statewide substitutions.* In American Samoa, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, the following variations from the meal requirements are authorized: A serving of a starchy vegetable—such as ufi, tanniers, yams, plantains, or sweet potatoes—may be substituted for the bread requirements.
- (4) *Individual substitutions.* Substitutions may be made by sponsors in food listed in paragraph (d) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods. Such statement shall be kept on file by the sponsor.
- (5) *Special variations.* FNS may approve variations in the food components of the meals on an experimental or a continuing basis for any sponsor where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.
- (6) *Temporary unavailability of milk.* If emergency conditions prevent a sponsor normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfasts, lunches or suppers without milk during the emergency period.
- (7) *Continuing unavailability of milk.* The inability of a sponsor to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases, the State agency may approve service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the milk components set forth in paragraph (d) of this section. In addition, the State agency may approve the use of nonfat dry milk in meals served to children participating in activities which make the service of fluid milk impracticable, and in locations which are unable to obtain fluid milk. Such authorization shall stipulate that nonfat dry milk be reconstituted at normal dilution and under sanitary conditions consistent with State and local health regulations.
- (8) *Additional foods.* To improve the nutrition of participating children, additional foods may be served with each meal.